



26 | lease; authorizing the department as domiciliary  
27 | receiver to pay certain expenses or reject certain  
28 | contracts; providing that, under certain  
29 | circumstances, certain persons of an insurer that is  
30 | under liquidation are permanently discharged and have  
31 | no further authority over the affairs or assets of the  
32 | insurer; amending s. 631.152, F.S.; conforming a  
33 | cross-reference; creating s. 631.1521, F.S.;  
34 | prohibiting certain defenses in actions by and against  
35 | a receiver; authorizing certain defenses in actions by  
36 | and against a receiver; specifying that a principal  
37 | under a surety bond or surety undertaking, under  
38 | certain circumstances, is entitled to credit for the  
39 | value of certain property against a reimbursement  
40 | obligation to the receiver; limiting admissibility of  
41 | evidence of fraud in the inducement to evidence  
42 | contained in insurer records; creating s. 631.1522,  
43 | F.S.; prohibiting, in a receiver's proceeding or  
44 | claim, the assertion of defenses or claims by an  
45 | affiliate or certain persons of an insurer except  
46 | under certain circumstances; providing construction;  
47 | amending s. 631.181, F.S.; authorizing a receivership  
48 | court to allow alternative procedures and requirements  
49 | for filing proofs of claim or allowing or proving  
50 | claims; providing construction; prohibiting a

51 receivership court from waiving certain filing  
52 requirements; authorizing a receiver to petition the  
53 receivership court to set certain deadlines; requiring  
54 a receiver to provide notice of filing a certain  
55 petition to certain claimants; amending s. 631.192,  
56 F.S.; prohibiting specified claims; amending s.  
57 631.271, F.S.; adding and revising claims to a list  
58 that establishes the priority of distribution of  
59 claims from an insurer's estate; specifying when  
60 interest on claims accrue and the interest rate  
61 calculation; amending s. 631.391, F.S.; specifying  
62 that certain persons in relation to an insurer who  
63 must cooperate with the department or office in  
64 certain proceedings or investigations include present  
65 or former roles; defining the term "person"; amending  
66 s. 631.395, F.S.; requiring an order of liquidation to  
67 authorize the release of certain claims files,  
68 records, documents, or claims, rather than only copies  
69 of the claims files, records, documents, or claims;  
70 amending s. 631.397, F.S.; authorizing the department  
71 as receiver to apply to the court for approval of a  
72 specified proposal, rather than requiring the  
73 department to make such application within a specified  
74 timeframe; deleting a specified notice requirement of  
75 the department; deleting a provision authorizing the

76 court to take action on the application under certain  
 77 circumstances; providing an effective date.

78

79 Be It Enacted by the Legislature of the State of Florida:

80

81 Section 1. Section 631.015, Florida Statutes, is amended  
 82 to read:

83 631.015 Reciprocity; treatment of policyholders.—  
 84 Reciprocity in the treatment of policyholders in receivership is  
 85 extended to those states which, in substance and effect, enact  
 86 the National Association of Insurance Commissioners  
 87 Rehabilitation and Liquidation Model Act, ~~or~~ the Uniform  
 88 Insurers Liquidation Act, or the Insurer Receivership Model Act.

89 Section 2. Section 631.021, Florida Statutes, is amended  
 90 to read:

91 631.021 Jurisdiction of delinquency proceeding; venue;  
 92 change of venue; exclusiveness of remedy; appeal; construction.—

93 (1) The circuit court shall have original jurisdiction of  
 94 any delinquency proceeding under this chapter, and any court  
 95 with jurisdiction is authorized to make all necessary or proper  
 96 orders to carry out the purposes of this chapter. Any  
 97 delinquency proceeding in this chapter is in equity.

98 (2) The venue of a delinquency proceeding or summary  
 99 proceeding against a domestic, foreign, or alien insurer shall  
 100 be in the Circuit Court of Leon County.

101 (3) A delinquency proceeding pursuant to this chapter  
 102 constitutes the sole and exclusive method of liquidating,  
 103 rehabilitating, reorganizing, or conserving an insurer. A ~~No~~  
 104 court may not ~~shall~~ entertain a petition for the commencement of  
 105 such a proceeding unless the petition has been filed in the name  
 106 of the state on the relation of the department. The Florida  
 107 Insurance Guaranty Association, Incorporated, the Florida  
 108 Workers' Compensation Insurance Guaranty Association,  
 109 Incorporated, the Florida Health Maintenance Organization  
 110 Consumer Assistance Plan, and the Florida Life and Health  
 111 Guaranty Association, Incorporated, shall be given reasonable  
 112 written notice by the department of all hearings that ~~which~~  
 113 pertain to an adjudication of insolvency of a member insurer.

114 (4) An appeal shall lie to the District Court of Appeal,  
 115 First District, from an order granting or refusing  
 116 rehabilitation, liquidation, or conservation and from every  
 117 order in a delinquency proceeding having the character of a  
 118 final order as to the particular portion of the proceeding  
 119 embraced therein.

120 (5) No service of process against the department in its  
 121 capacity as receiver shall be effective unless served upon a  
 122 person designated by the receiver and filed with the circuit  
 123 court having jurisdiction over the delinquency proceeding. The  
 124 designated person shall refuse to accept service if acceptance  
 125 would violate a stay against legal proceedings involving an

126 insurer that is the subject of delinquency proceedings or would  
 127 violate any orders of the circuit court governing a delinquency  
 128 proceeding. The person denied service may petition the circuit  
 129 court having jurisdiction over the delinquency proceeding for  
 130 relief from the receiver's refusal to accept service. This  
 131 subsection shall be strictly construed, and any purported  
 132 service on the receiver or the department that is not in  
 133 accordance with this subsection shall be null and void.

134 (6) The domiciliary court acquiring jurisdiction over  
 135 persons subject to this chapter may exercise exclusive  
 136 jurisdiction to the exclusion of all other courts, except as  
 137 limited by the provisions of this chapter. Upon the issuance of  
 138 an order of conservation, rehabilitation, or liquidation, the  
 139 Circuit Court of Leon County has ~~shall have~~ exclusive  
 140 jurisdiction over all ~~with respect to~~ assets or property of the  
 141 any insurer, wherever located, including property located  
 142 outside the territorial limits of the state ~~subject to such~~  
 143 ~~proceedings and claims against said insurer's assets or~~  
 144 ~~property.~~

145 (7) This chapter constitutes this state's insurer  
 146 receivership laws, and these laws must be construed as  
 147 consistent with each other. If there is a conflict between this  
 148 chapter and any other law, this chapter prevails.

149 Section 3. Subsections (3) and (4) are added to section  
 150 631.031, Florida Statutes, to read:

151           631.031 Initiation and commencement of delinquency  
152 proceeding.—

153           (3) An insurer subject to an order to show cause entered  
154 pursuant to this chapter must file its written response to the  
155 order, together with any defenses it may have to the  
156 department's allegations, no later than 20 days after service of  
157 the order to show cause, but no less than 15 days before the  
158 date of the hearing set by the order to show cause.

159           (4) A hearing held pursuant to this chapter to determine  
160 whether cause exists for the department to be appointed receiver  
161 must be commenced within 60 days after an order directing an  
162 insurer to show cause.

163           Section 4. Subsection (1) of section 631.041, Florida  
164 Statutes, is amended to read:

165           631.041 Automatic stay; relief from stay; injunctions.—

166           (1) An application or petition under s. 631.031 operates  
167 as a matter of law as an automatic stay applicable to all  
168 persons and entities, other than the receiver and the office,  
169 which shall be permanent and survive the entry of an order of  
170 conservation, rehabilitation, or liquidation, and which shall  
171 prohibit:

172           (a) The commencement or continuation of judicial,  
173 administrative, or other action or proceeding against the  
174 insurer or against its assets or any part thereof;

175           (b) The enforcement of a judgment against the insurer or

176 an affiliate obtained either before or after the commencement of  
 177 the delinquency proceeding;

178 (c) Any act to obtain possession of property of the  
 179 insurer;

180 (d) Any act to create, perfect, or enforce a lien against  
 181 property of the insurer, except that a secured claim as defined  
 182 in s. 631.011(21) may proceed under s. 631.191 after the order  
 183 of liquidation is entered;

184 (e) Any act to collect, assess, or recover a claim against  
 185 the insurer, except claims as provided for under this chapter;  
 186 and

187 (f) The setoff or offset of any debt owing to the insurer,  
 188 except offsets as provided in s. 631.281.

189 Section 5. Present subsections (3) through (5) and (6)  
 190 through (10) of section 631.141, Florida Statutes, are  
 191 redesignated as subsections (4) through (6) and (8) through  
 192 (12), respectively, new subsections (3) and (7) are added to  
 193 that section, and present subsection (8) is amended, to read:

194 631.141 Conduct of delinquency proceeding; domestic and  
 195 alien insurers.—

196 (3) The receiver may assume or reject any executory  
 197 contract or unexpired lease of the insurer.

198 (7) The department as domiciliary receiver may pay any  
 199 expenses under contracts, leases, employment agreements, or  
 200 other arrangements entered into by the insurer before



201 receivership as the department deems necessary for the purposes  
 202 of this chapter. The department is not required to pay any such  
 203 expenses that it determines are not necessary and may reject any  
 204 contract pursuant to subsection (3).

205 (10)(8) The department as domiciliary receiver may take  
 206 such action as it deems necessary or appropriate to reform and  
 207 revitalize the insurer. The department shall have all the powers  
 208 of the directors, officers, and managers, whose authority shall  
 209 be suspended, except as they are redelegated by the receiver.  
 210 The receiver shall have full power to direct and manage the  
 211 affairs of the insurer, to hire and discharge employees, and to  
 212 deal with the property and business of the insurer. In the event  
 213 of the liquidation of an insurer domiciled in this state, and  
 214 notwithstanding any provision of chapter 605, chapter 607,  
 215 chapter 617, chapter 620, or chapter 621, all officers,  
 216 directors, and managers of the insurer are permanently  
 217 discharged and have no further authority of any kind over the  
 218 affairs or assets of the insurer, except as may be redelegated  
 219 by the department.

220 Section 6. Subsection (4) of section 631.152, Florida  
 221 Statutes, is amended to read:

222 631.152 Conduct of delinquency proceeding; foreign  
 223 insurers.—

224 (4) Paragraph 631.141(9)(b) ~~Section 631.141(7)(b)~~ applies  
 225 to ancillary delinquency proceedings opened for the purpose of

226 obtaining records necessary to adjudicate the covered claims of  
227 Florida policyholders.

228 Section 7. Section 631.1521, Florida Statutes, is created  
229 to read:

230 631.1521 Actions by and against the receiver.—

231 (1) An allegation by the receiver of improper or  
232 fraudulent conduct against any person may not be the basis of a  
233 defense by a third party to the enforcement of a contractual  
234 obligation owed to the insurer. This section does not bar a  
235 third party from the right to raise a defense that the conduct  
236 was materially and substantially related to the contractual  
237 obligation for which enforcement is sought.

238 (2) A prior wrongful or negligent action of any present or  
239 former officer, manager, director, trustee, owner, employee, or  
240 agent of the insurer may not be asserted as a defense to a claim  
241 by the receiver under a theory of estoppel, comparative fault,  
242 intervening cause, proximate cause, reliance, mitigation of  
243 damages, or otherwise. However, the affirmative defense of fraud  
244 in the inducement may be asserted against the receiver in a  
245 claim based on a contract; and a principal under a surety bond  
246 or a surety undertaking is entitled to credit for the value of  
247 any property pledged to secure the reimbursement obligation  
248 against any reimbursement obligation to the receiver, to the  
249 extent that the receiver has possession or control of the  
250 property, or that the insurer or its agents misappropriated such

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251 property, which includes, but is not limited to, the comingling  
252 of such property. Evidence of fraud in the inducement is  
253 admissible only if it is contained in the records of the  
254 insurer.

255 (3) An action or inaction by an insurance regulatory  
256 authority may not be asserted as a defense to a claim by the  
257 department.

258 Section 8. Section 631.1522, Florida Statutes, is created  
259 to read:

260 631.1522 Unrecorded obligations and defenses and claims of  
261 affiliates.-

262 (1) In any proceeding or claim by the receiver, an  
263 affiliate, a controlled or controlling person, or a present or  
264 former officer, manager, director, trustee, or shareholder of  
265 the insurer may not assert any defense unless:

266 (a) Evidence of the defense was recorded in the books and  
267 records of the insurer at or about the time the events giving  
268 rise to the defense occurred; and

269 (b) If required by statutory accounting practices and  
270 procedures, such events were timely reported on the insurer's  
271 official financial statements filed with the office.

272 (2) An affiliate, a controlled or controlling person, or a  
273 present or former officer, manager, director, trustee, or  
274 shareholder of the insurer may not assert any claim unless:

275 (a) The obligations were recorded in the books and records

276 of the insurer at or about the time the obligations were  
277 incurred; and

278 (b) If required by statutory accounting practices and  
279 procedures, the obligations were timely reported on the  
280 insurer's official financial statements filed with the office.

281 (3) This section does not bar claims based on unrecorded  
282 or unreported transactions by the receiver against any  
283 affiliate, controlled or controlling person, or present or  
284 former officer, manager, director, trustee, or shareholder of  
285 the insurer.

286 Section 9. Paragraph (g) of subsection (2) and subsections  
287 (4) and (5) are added to section 631.181, Florida Statutes, to  
288 read:

289 631.181 Filing and proof of claim.—

290 (2)

291 (g) Upon application of the receiver:

292 1. The receivership court may allow alternative procedures  
293 and requirements for the filing of proofs of claim or for  
294 allowing or proving claims.

295 2. If the receivership court waives the requirements of  
296 filing a proof of claim for a person, class, or group of  
297 persons, a timely proof of claim by such person, class, or group  
298 is deemed to be filed for all purposes. However, the  
299 receivership court may not waive guaranty association or  
300 coverage determination proof of claim filing requirements, to

301 the extent that the guaranty fund statute or filing requirements  
 302 are inconsistent with the receivership court's waiver of proof.

303 (4) Notwithstanding any other provision of this chapter,  
 304 the receiver may petition the receivership court to set a date  
 305 certain after which no further claims may be filed.

306 (5) The receiver may petition the receivership court to  
 307 set a date certain before which all contingent or unliquidated  
 308 claims are final. In addition to the notice requirements in this  
 309 section, the receiver shall give notice of filing the petition  
 310 to all claimants with claims that remain contingent or  
 311 unliquidated under this section.

312 Section 10. Subsections (5) and (6) are added to section  
 313 631.192, Florida Statutes, to read:

314 631.192 Allowance of certain claims.—

315 (5) A claim under a policy of insurance may not be allowed  
 316 for an amount in excess of the applicable policy limits.

317 (6) A claim may not be allowed for postjudgment interest  
 318 accrued after the date of liquidation.

319 Section 11. Paragraphs (a), (b), (f), and (j) of  
 320 subsection (1) of section 631.271, Florida Statutes, are amended  
 321 to read:

322 631.271 Priority of claims.—

323 (1) The priority of distribution of claims from the  
 324 insurer's estate shall be in accordance with the order in which  
 325 each class of claims is set forth in this subsection. Every

326 claim in each class shall be paid in full or adequate funds  
327 shall be retained for such payment before the members of the  
328 next class may receive any payment. No subclasses may be  
329 established within any class. The order of distribution of  
330 claims shall be:

331 (a) *Class 1.*—

332 1. All of the receiver's costs and expenses of  
333 administration.

334 2. All of the expenses of a guaranty association or  
335 foreign guaranty association in handling claims.

336 3. All of the deputy supervisor's costs and expenses of  
337 administration incurred as a result of administrative  
338 supervision under part VI of chapter 624.

339 (b) *Class 2.*—All claims under policies for losses  
340 incurred, including third-party claims, all claims against the  
341 insurer for liability for bodily injury or for injury to or  
342 destruction of tangible property which claims are not under  
343 policies, ~~and~~ all claims of a guaranty association or foreign  
344 guaranty association, all claims related to a patient's  
345 healthcare coverage by physicians, hospitals, and other  
346 providers of a health insurer or health maintenance  
347 organization, and all claims of residents arising out of a  
348 continuing care contract under chapter 651. All claims under  
349 life insurance and annuity policies, whether for death proceeds,  
350 annuity proceeds, or investment values, shall be treated as loss

351 claims. That portion of any loss, indemnification for which is  
352 provided by other benefits or advantages recovered by the  
353 claimant, may not be included in this class, other than benefits  
354 or advantages recovered or recoverable in discharge of familial  
355 obligations of support or by way of succession at death or as  
356 proceeds of life insurance, or as gratuities. No payment by an  
357 employer to her or his employee may be treated as a gratuity.

358 (f) Class 6.—Claims of general and other unsecured  
359 creditors, including claims against the insurer for punitive  
360 damages, bad faith, or wrongful settlement practices.

361 (j) Class 10.—Interest on allowed claims of Classes 1  
362 through 9. The rate of interest payable on an allowed claim must  
363 accrue from the date of liquidation until such claims are  
364 adjudicated. The interest rate must be calculated in accordance  
365 with s. 55.03, ~~according to the terms of a plan to pay interest~~  
366 ~~on allowed claims proposed by the liquidator and approved by the~~  
367 ~~receivership court.~~

368 Section 12. Section 631.391, Florida Statutes, is amended  
369 to read:

370 631.391 Cooperation of officers and employees.—

371 (1) Any present or former officer, director, manager,  
372 trustee, agent, adjuster, employee, or independent contractor of  
373 any insurer or affiliate and any other person who possesses any  
374 executive authority over, or who exercises any control over, any  
375 segment of the affairs of the insurer or affiliate shall fully

376 cooperate with the department and office in any proceeding under  
377 this chapter or any investigation preliminary or incidental to  
378 the proceeding. An order of rehabilitation or liquidation which  
379 results in the discharge or suspension of any of the persons  
380 listed above does not operate to release such person from the  
381 duty to cooperate with the department and office as set out  
382 herein. As used in this section, the term "person" includes any  
383 person who directly or indirectly exercises control over  
384 activities of the insurer through any holding company or other  
385 affiliate of the insurer. The term ~~to~~ "cooperate" includes, but  
386 is not limited to, the following:

387 (a) To reply promptly in writing to any inquiry from the  
388 department or office requesting such a reply;

389 (b) Promptly to make available and deliver to the  
390 department or office any books, accounts, documents, other  
391 records, information, data processing software, or property of  
392 or pertaining to the insurer and in her or his possession,  
393 custody, or control; or

394 (c) Promptly to provide access to all data processing  
395 records in hard copy and in electronic form and to data  
396 processing facilities and services.

397 (2) No person shall obstruct or interfere with the  
398 department or office in the conduct of any delinquency  
399 proceeding or any investigation preliminary or incidental  
400 thereto.



401 (3) This section does not prohibit any person from seeking  
 402 legal relief from a court when aggrieved by the petition for  
 403 liquidation or other delinquency proceeding or by other orders.

404 (4) Any person referred to in subsection (1) who fails to  
 405 cooperate with the department or office, or any other person who  
 406 obstructs or interferes with the department or office, in the  
 407 conduct of any delinquency proceeding or any investigation  
 408 preliminary or incidental thereto, is guilty of a misdemeanor of  
 409 the first degree, punishable as provided in s. 775.082 or by  
 410 fine of not more than \$10,000.

411 (5) Refusal by any person referred to in subsection (1) to  
 412 provide records upon the request of the department or office is  
 413 grounds for revocation of any insurance-related license,  
 414 including, but not limited to, agent and third-party  
 415 administrator licenses.

416 (6) Any person referred to in subsection (1) who refuses  
 417 to cooperate in providing records upon the request of the  
 418 department or office is liable for any penalties, fines, or  
 419 other costs assessed against the guaranty association or the  
 420 receiver that result from the refusal or delay to provide  
 421 records.

422 Section 13. Section 631.395, Florida Statutes, is amended  
 423 to read:

424 631.395 Guaranty fund; orders of court.—Any order of  
 425 liquidation issued pursuant to s. 631.111 or s. 631.131 must

426 ~~shall~~ authorize and direct the department as receiver to  
427 coordinate the operation of the receivership with the operation  
428 of any insurance guaranty fund authorized to operate in this  
429 state and may authorize the department to provide data  
430 processing services for any appropriate guaranty fund. Such  
431 authorization must ~~shall~~ include, but not be limited to, release  
432 ~~of copies~~ of any of the following:

433 (1) Claims files, records, or documents pertaining to  
434 claims on file with the insolvent insurer; and

435 (2) Insurance claims filed with the receiver.

436 Section 14. Subsections (1), (4), and (5) of section  
437 631.397, Florida Statutes, are amended to read:

438 631.397 Use of certain marshaled assets.—

439 (1) ~~Within 120 days of a final determination of insolvency~~  
440 ~~of an insurer by a court of competent jurisdiction of this~~  
441 ~~state,~~ The department, as receiver, may ~~shall~~ apply to the court  
442 for approval of a proposal to disburse assets out of such  
443 insurer's marshaled assets, as such assets become available, to  
444 each association entitled thereto or, if there are no assets  
445 available for such disbursement, then for approval of such  
446 proposal as the receiver deems appropriate. For the purposes of  
447 this section, the term "association" includes the Florida  
448 Insurance Guaranty Association, Incorporated, the Florida  
449 Workers' Compensation Insurance Guaranty Association, and any  
450 entity or person performing a function in another state similar

451 to that performed in this state by the Florida Insurance  
452 Guaranty Association, Incorporated, or the Florida Workers'  
453 Compensation Insurance Guaranty Association, provided the  
454 Florida Insurance Guaranty Association, Incorporated, or the  
455 Florida Workers' Compensation Insurance Guaranty Association, is  
456 entitled to like payment under the laws of the association's  
457 state of domicile in respect to insolvent companies doing  
458 business in that state.

459 ~~(4) Notice of such application shall be given by the~~  
460 ~~department to the associations in, and to the commissioners of~~  
461 ~~insurance of, each of the states to which disbursement may be~~  
462 ~~made. Such notice shall be made by certified mail, first-class~~  
463 ~~postage prepaid, at least 15 days prior to submission of such~~  
464 ~~application to the court. Such notice shall be deemed to have~~  
465 ~~been made when deposited in the mail.~~

466 ~~(5) Action on the application may be taken by the court if~~  
467 ~~notice has been given pursuant to subsection (4) and the~~  
468 ~~department's proposal complies with subsection (2).~~

469 Section 15. This act shall take effect July 1, 2017.